

## Internal Revenue Service

Number: **201014047**

Release Date: 4/9/2010

Index Number: 355.00-00

Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

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CC:CORP:BR2

PLR-142985-09

Date:

December 07, 2009

### Legend

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

Shareholder 5 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

Date A =

Date B =

Dear :

This is in response to your letter dated September 24, 2009 requesting that we supplement our letter ruling dated January 11, 2006 (PLR-142584-06) ("Prior Letter Ruling"). The information submitted for consideration in that letter and in later correspondence is summarized below. Capitalized terms not defined in this letter have the meanings originally assigned to them in the Prior Letter Ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding whether the distribution described below: (i) satisfies the business purpose requirement of Treas. Reg. section 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. section 1.355-2(d)); and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing 50 percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. section 1.355-7).

The Prior Letter Ruling addresses certain U.S. federal income tax consequences of the Proposed Transactions under sections 355, 368 and certain other relevant provisions of the Internal Revenue Code. Except as modified below, the representations and material facts set forth in the Prior Letter Ruling remain in effect for purposes of this supplemental letter ruling.

### **Supplemental Facts**

The material facts as described in the Prior Letter Ruling are unchanged, except as stated below.

Completed Steps of the Proposed Transactions:

- (1) Sub 1 has converted from a corporation to a single member limited liability company ("Sub 1 Conversion") which is treated as a disregarded entity for federal income tax purposes. Distributing represents that the conversion of Sub 1 to a limited liability company was treated for federal income tax purposes as a liquidation under section 332.
- (2) Controlled LLC has converted from a limited liability company to a corporation ("Conversion") under State Y law. Distributing represents that the Conversion was treated as a contribution by Sub 2 of all of the assets of Controlled LLC to Controlled in exchange for all of the stock of Controlled and the assumption by Controlled of all the liabilities associated with Controlled LLC. The authorized capital stock of Controlled consists of one class of common stock which was wholly owned by Sub 2 at the time of the Conversion.
- (3) Sub 2 distributed all of the stock of Controlled to Distributing on Date A.

Changes to Facts as Previously Submitted

- (1) Sub 6 has converted from a corporation to a single member limited liability company which is treated as a disregarded entity for federal income tax purposes. Distributing represents that this conversion of Sub 6 to a limited liability company is treated for federal income tax purposes as a liquidation under Section 332.
- (2) Individual Shareholder has loaned Distributing approximately \$k, which will remain outstanding following the External Distribution.
- (3) The dividend in arrears on the preferred stock of Distributing will be paid in the form of Distributing's promissory note to the Individual Shareholder. The term of the dividend note will be less than 1 years.
- (4) Distributing will contribute as part of the Contribution to Controlled, its promissory note containing the same principal amount, interest rate, and payment terms as the mortgage encumbering the land held by Sub 6 to effectuate an economic assumption of the mortgage. The outstanding principal is approximately \$m and is due and payable on Date B.
- (5) Certain of the assets to be contributed to Controlled in the Contribution are currently pledged to support a line of credit to Distributing. It is a single purpose

facility entered into to provide Distributing a source of funds to repurchase the outstanding publicly traded indebtedness of Sub 2. Once the credit arrangement was finalized, it was no longer advantageous to repurchase the debt. The line of credit will remain outstanding after the External Distribution, although Distributing does not anticipate drawing funds under the line of credit.

- (6) The ownership structure of Distributing has changed from that described in the Prior Letter Ruling. At this time, Individual Shareholder owns a percent of the outstanding Class A common stock, b percent of the Class B common stock, and c percent of the outstanding preferred stock. Shareholder 2 owns d percent of the outstanding Class A common stock and e percent of the outstanding Class B common stock. Shareholder 3 owns f percent of the outstanding Class B common stock. Shareholder 4 owns g percent of the outstanding Class B common stock. Shareholder 5 owns h percent of the outstanding Class A common stock. Common Shareholders include all holders of Class A common stock or Class B common stock.
- (7) In the External Distribution, Distributing will distribute to its shareholders all of the stock of Controlled. Individual Shareholder will surrender all of its Distributing preferred stock for an amount of Controlled stock equal in value to the value of the Distributing preferred stock surrendered. All holders of Distributing Class B common stock may elect ("Election") to surrender shares of Distributing Class B common stock that have a value approximately equal to the value of the shares of Controlled stock received in exchange thereof. To the extent Distributing holds any shares of Controlled stock following the Election, such shares will be distributed pro rata to the remaining Common Shareholders.

### **Representations**

Except as otherwise modified, Distributing and Controlled reaffirm each representation made in the Prior Letter Ruling.

The following representations of the Prior Ruling are modified as follows:

- (i) The total adjusted bases of the assets transferred to Controlled by Sub 2 in the Conversion equals or exceeds the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject.
- (bb) The fair market value of the stock of Controlled to be received by each Individual Shareholder and Class B Shareholders in the External Distribution will be approximately equal to the aggregate fair market value of the Distributing preferred stock and Distributing Class B common stock surrendered by each such shareholder in the exchange.

(cc) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(ll) The total adjusted bases of the assets transferred to Controlled by Distributing in the Contribution equals or exceeds the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject.

(oo) Other than accounts payable incurred in the ordinary course of business, the line of credit described in the Prior Letter Ruling, and the Mortgage Note, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the External Distribution.

The following additional representations are made in connection with this supplemental ruling letter:

#### Internal Distribution

(u) The total fair market value of the assets deemed contributed to Controlled in the Conversion will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in the deemed exchange, (ii) the amount of any liabilities owed to Controlled by Sub 2 that are discharged or extinguished in connection with the deemed exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Sub 2 in the deemed exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Conversion.

(v) Neither the Business X Market 1 activity conducted by Sub 2 nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, Sub 2 will have been the principal owner of the goodwill and significant assets of the Business X Market 1 activity, and Sub 2 will continue to be the owner following the Internal Distribution.

(w) Neither the Business X Market 2 activity conducted by Controlled nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, the Sub 2 separate affiliated group ("SAG") (within the

meaning of section 355(b)(3)(B)) of the Controlled SAG will have been the principal owner of the goodwill and significant assets of the Business X Market 2 activity, and Controlled will continue to be the owner following the Internal Distribution.

#### Contribution and External Distribution

(xx) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled in the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without recognition of gain) received by Distributing in the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

(yy) Neither Business X Market 1 activity conducted by Distributing nor control of an entity conducting the business will have been acquired during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. section 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the External Distribution, Distributing will have been the principal owner of the goodwill and significant assets of the Business X Market 1 activity, and Distributing will continue to be the owner following the External Distribution.

(zz) Neither the Business X Market 2 activity conducted by Controlled nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. section 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the External Distribution, the Distributing SAG or the Controlled SAG will have been the principal owner of the goodwill and significant assets of the Business X Market 2 activity, and the Controlled SAG will continue to be the owner following the External Distribution.

(aaa) As part of the External Distribution, Distributing and Controlled will enter into an agreement whereby Distributing will agree to indemnify Controlled and make it whole in the event of any foreclosure with respect to the Pledged Assets.

#### **Ruling**

Based solely on the information submitted and the representations set forth above, as well as the information and representations submitted with the Prior Letter Ruling, we rule as follows:

- 1) Ruling 18 is modified to read as follows: In the External Distribution, no gain or loss will be recognized by (and no amount will otherwise be included in the income of) the shareholders of Distributing upon the receipt of Controlled stock either in exchange for surrendered Distributing Class B common stock and Distributing preferred stock, or pursuant to a pro rata distribution of shares of Controlled stock to the Common Shareholders. Section 355(a)(1).
- 2) The Supplemental Facts submitted will not adversely affect the Prior Letter Ruling, which, as modified hereby, will remain in full force and effect.

### **Caveats**

No opinion is expressed about the tax treatment of the proposed transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the proposed transaction satisfies the business purpose requirement of § 1.335-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)); or (iii) whether the proposed transaction is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7).

### **Procedural Statements**

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
(Corporate)

cc: